Graphic Communications International Union Local 735-S (Quebecor Printing Hazleton, Inc.) *and* Patrick Quick. Case 4–CB–7981

November 17, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND BRAME

On September 14, 1998, Administrative Law Judge William G. Kocol issued the attached decision. The Respondent filed exceptions, to which the General Counsel and the Charging Party filed separate answering briefs. The Charging Party filed exceptions and a supporting brief, the Respondent filed an answering brief, and the Charging Party filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Graphic Communications International Union Local 735-S, Hazleton, Pennsylvania, its officers, agents, and representatives, shall take the action set forth in the Order.

William Slack and *Patricia Garber, Esqs.,* for the General Counsel.

Ira H. Weinstock, Esq. (Ira H. Weinstock, P.C.), of Harrisburg, Pennsylvania, for the Respondent.

W. James Young, Esq. (National Right to Work Legal Defense Foundation, Inc.), of Springfield, Virginia, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM G. KOCOL, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on July 21, 1998. The charge was filed October 9, 1997,[1] and the complaint was issued January 30, 1998. The complaint alleges that Graphic Communications International Union Local 735-S (Respondent) violated Section 8(b)(1)(A) of the Act by threatening Patrick Quick with legal action, and thereafter initiating legal action against Quick, because he did not pay dues to Respondent as a condition of employment. The complaint also alleges that Respondent unlawfully retained dues deducted from Quick's wages. Respondent filed a timely answer that admitted the filing and service of the charge, jurisdiction, labor organization status, the agency status of Thomas Obzut, the appropriateness of the unit, the existence of a collective-bargaining agreement covering the unit employees, and the fact that Quick was employed in the unit. Respondent denied the remaining allegations of the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Charging Party, and Respondent,[2] I make the following

FINDINGS OF FACT

I. JURISDICTION

Quebecor Printing Hazleton, Inc. (the Employer), a corporation, is engaged in the business of publishing telephone directories at its facility in Hazleton, Pennsylvania, where it annually sells and ships goods valued in excess of $50,000 from its facility directly to points located outside the Commonwealth of Pennsylvania. Respondent admits and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview

A main issue in this case is the proper interpretation of a union-security clause contained in the collective-bargaining agreement between Respondent and the Employer. The clause at issue reads:

> It is agreed that new employees shall be required as a condition of continued employment to apply for a membership in the Union upon completion of the probationary period or on the effective date of the Agreement, whichever is later.

This clause has been in the contract at all times material to this proceeding; it covers a unit of all full-time and regular part-time production and maintenance employees of the Employer at its Hazleton, Pennsylvania facility. Quick has been an employee in that unit at all times material. In the late 1960s Quick had been president of Respondent.

---

[1] The judge found, and we agree for the reasons set forth by him, that the Charging Party resigned union membership by his March 1997 letter to the Union. The letter, which was inadvertently misquoted by the judge, provides:

> As a non-member of Local 735-S working in the [Employer's] bargaining unit, I am being forced to have deducted from my pay an amount equivalent to full member dues. To the extent I may be required to pay anything to Local 735-S to work at Quebecor, I do not want to pay more than is legally required. Specifically, I do not want to pay, if at all any more than the "financial core" minimum required to the support of the Union's admimistration [sic] of the [contract]. Please advise me in writing 1) what that "financial core" minimum amount is which the Union contents [sic] I am required to pay, and 2) the basis for the Union's calculation in that regard.

[2] The judge correctly recommended that the Respondent reimburse the Charging Party only for the personal expenses he actually incurred in defending against the lawsuit filed by the Respondent, contrary to the exceptions of the Charging Party. See *Food & Commercial Workers Locals 951, 1036, & 7 (Meijer, Inc.)*, 329 NLRB 730 (1999).

We shall amend the judge's recommended remedy to provide that interest be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[1] All dates are in 1997 unless otherwise indicated.

[2] The General Counsel's unopposed motion to correct transcript is granted and received in evidence as G.C. Exh. 23. The General Counsel's brief was particularly well supported with appropriate legal authority.

B. Quick Joins and then Resigns

Quick was hired by the Employer's predecessor in August 1993 and became a member of Respondent after his 90-day probationary period. At the time he was hired he signed a dues-authorization form that authorized the deduction of a specified amount of money for "union dues" and it limited revocations of the authorization to no sooner than 1 year from the date of the authorization or the termination date of the contract, whichever occurred sooner, and then only upon 10 days' written notice. After the Employer assumed the business Quick signed another dues-checkoff authorization.

On August 23, 1996, Quick prepared and signed two documents. The first document referred to a quote supposedly given at the Harvard School of Business concerning the importance of human assets in a business. It also contained Quick's thoughts concerning how a union should treat its members. The letter ended "Therefore due to the fact that the above does not seem to be the purpose of this *Union*, I therefore submit the following resignation." The next document began "I, Patrick D. Quick, do hereby resign" from Respondent. It then listed the reasons for Quick's decision. It ended "I HEREBY RESIGN." Quick gave the documents to employee Charlie Allen.[3] Allen took the documents and said that he would give them to the chief shop steward. Quick also gave a copy of the letters to Jack Butler, the Employer's director of human resources. However, Quick continued to have dues deducted from his paycheck.

In March, Quick prepared and sent to Thomas Obzut, Respondent's treasurer-secretary, the following letter:

> As a non-member of Local 735-S working in the [Employer's] bargaining unit, I am being forced to have deducted from my pay an amount equivalent to the full member dues. To the extent that I may be required to pay anything to Local 715-S to work at [the Employer] I do not want to pay more than is legally required. Specifically, I do not want to pay if at all the "financial core" minimum required to support the Union's administration [of the contract]. Please advise me in writing 1) what the "financial core" minimum amount is which the Union contents [sic] I am required to pay, and 2) the basis for the Union's calculation in that regard.

On March 11, Respondent received this letter.

On March 24, Obzut sent a letter to Quick that acknowledged receipt of his letter and gave information concerning financial core membership. It explained that he would receive a rebate of a specified amount from the time he requested to become a financial core member and thereafter "as long as you remain a member of" Respondent.[4] Dues continued to be deducted from Quick's pay. On April 13, Quick sent Respondent a letter that requested a financial justification for Respondent's calculations of the percentage of dues owed by financial core members and objecting to the notion that he would have to pay full dues and then receive a portion thereafter as a rebate. On May 19, Obzut sent Quick a letter that began "This to advise you that that I have received your letter stating your wish to become a non-member of the Union. You further explained your wish to become a financial core member of the Union." The letter then pointed out the advantages of union membership that Quick would lose should he become a financial core supporter, as opposed to a full member, of the Union. It stated, "I strongly urge you to reconsider your decision to resign from the Union. However, if I do not hear from you again, I will assume that your resignation is effective . . . ." After this letter Respondent continued to receive and collect dues from Quick's paycheck. On June 2, Quick sent yet another letter to Respondent. This letter began "As you know I have previously resigned my membership in [Respondent] . . . ." The letter protested the continued deduction of dues from his paycheck and requested that this cease. The letter ended "Effective (10) days from now I revoke my dues check off form I previously may have signed several years ago." Respondent received this letter on June 6. About 10 days later, dues were no longer deducted from Quick's paycheck.

However, on June 10, Obzut sent Quick a letter that acknowledged receiving Quick's most recent letter. This letter stated that as a past president of Respondent, Quick knew that Pennsylvania was not a right-to-work State and that if he wished to continue to work for the Employer then, pursuant to the contract, he would have to pay dues. On July 23, Obzut sent Quick another letter that informing him that since he no longer wished to use the checkoff procedure, he had the right to do so. The letter continued:

> Let me inform you that as long as you are a member of [Respondent] you are obligated to pay Union dues. . . . I suggest you contact me within ten days after receiving this notice as that [sic] we can discuss how you are going to pay your dues. Let me also advise you that you are now in arrears for three weeks in June and three weeks in July.

Of course, Quick responded with his own letter that stated:

> Your letter of July 23, totally misses the point of my letter to you of June, 1997. I am not required to pay money to a union in order to work at [the Employer] not by checkoff, not otherwise. This is my right under federal law. Similarly, you also incorrectly state "that as long as you are a member of [Respondent] you are obligated to pay Union dues." But I am not a member of [Respondent]; as you well know, I have long since resigned my membership in [Respondent]. Therefore, your statement that I am "in arrears" is also wrong.

On August 11, Obzut sent Quick a letter that read:

> I have just received your letter stating that Federal Law forgives you, your requirement to pay Union Dues. I strongly suggest you check the law again. Federal Law

[3] Quick identified Allen as the "bindery steward." Allen was not alleged in the complaint as an agent of Respondent, and Respondent's counsel objected to the testimony concerning Allen's agency status on the grounds that he was surprised and had no knowledge of Allen. The General Counsel then moved to amend the complaint to allege Allen as an agent of Respondent. I indicated that I was inclined to grant the motion to amend the complaint, but that on request, I was also inclined to grant Respondent additional time to prepare to meet the new allegation even if that meant that we had to resume the hearing at some date in the future. The General Counsel then withdrew the motion to amend the complaint. Thus, I do not conclude that Allen was an agent of Respondent.

[4] The General Counsel does not allege or contend that Respondent acted unlawfully concerning its response to Quick's assertion of financial core limits on his payment of dues.

mandates that as long as you work in a Union shop you must pay Dues.

If I do not hear from you concerning your Dues (you are now in arrears) I will take Legal action against you for the collection of your Union Dues.

I am giving you ten days from the date of this notice to contact me so we can rectify this matter.

On September 8, Obzut sent another letter to Quick that advised him of the amount of dues and period of time that he was in arrears in payment of union dues. The letter again stated that if Quick did not pay his dues legal action would be taken to collect them. On September 30, Respondent filed a civil complaint against Quick in the local district court in Hazleton, Pennsylvania, concerning Quick's failure to pay dues. This cause of action was removed by Quick to Federal court, where the complaint was dismissed on the grounds that the cause of action was preempted by the complaint in this case. No appeal has been taken from that dismissal.

C. Analysis

The General Counsel contends that Respondent unlawfully threatened to take legal action, and then did file and maintain a lawsuit, against Quick because he did not pay union dues. The General Counsel also contends that Respondent unlawfully accepted and retained union dues deducted from Quick's wages. Except pursuant to a lawful union-security provision in a collective-bargaining agreement, an employee cannot be compelled to pay dues to a union. Put differently, an employee can be required to pay such dues only if the employee voluntarily is a member of the union or is covered by a lawful union-security provision that requires payment of such dues. *Pattern Makers v. NLRB,* 473 U.S. 95 (1985); *NLRB v. General Motors Corp.,* 373 U.S. 734 (1963).

I turn first to examine the facts to determine whether Quick voluntarily agreed to pay dues to Respondent. As described above, Quick did in fact voluntarily join Respondent. However, by at least March Quick clearly disclosed to Respondent his intent to resign from membership in Respondent and in the May 19 letter Respondent acknowledged Quick's intent to resign. Section 7 and Section 8(b)(1)(A) guarantee to employees the right to resign from membership of a labor organization. *Pattern Makers,* id. I conclude that Quick, by his conduct, ended his membership in Respondent when he clearly expressed his intent to resign. *E. I. DuPont Newport Local 9 (Du Pont & Co.),* 300 NLRB 1165, 1166 (1990). Moreover, Quick's letters to Respondent concerning his desire to become a financial core "member" necessarily carried with it the notion that he was effectively resigning as a full member and thus no longer would be willing to voluntarily pay dues. *Carpenters Local 470 (Tacoma Boatbuilding Co.),* 277 NLRB 513 (1985). I thus reject Respondent's contention that Quick failed to indicate an intent to resign until some later time.

I have also concluded that Quick signed a dues-authorization form. However, the Board has held that when an employee resigns from membership in a union, the dues-checkoff authorization automatically ceases to be operative and does not serve as an independent promise to pay dues to a union, at least in the absence of a lawful union-security clause that requires the payment of dues as a condition of employment. *Electrical Workers IBEW Local 2088 (Lockheed Space Operations),* 302 NLRB 322 (1991); *Woodworkers (Weyerhauser Co.),* 304 NLRB 100 (1991). The language in the checkoff form signed by Quick applies to "union dues" and does not explicitly state that he is undertaking an obligation to continue to pay dues in the absence of any other obligation to so. *Baltimore Sun Co.,* 302 NLRB 436 (1991). Thus, I conclude that Quick resigned from membership in Respondent, thereby extinguishing any voluntary obligation to pay dues, and that the checkoff form that he signed did not serve as a separate source for any voluntary obligation to pay such dues.

I turn now to determine whether Quick was obligated to pay dues to Respondent pursuant to a lawful union-security agreement. In ascertaining the obligations of employees under such a provision, the Board looks only to the express language of the agreed on contractual provision. *Steelworkers (Asarco, Inc.),* 309 NLRB 964 (1992); *Communications Workers (Pacific Bell),* 295 NLRB 196 (1989); *Machinists District Lodge 727 (Lockheed-California Co.),* 266 NLRB 12, 17 (1983); *Jack Watkins, G.M.C.,* 203 NLRB 632, 635 (1973). Because the penalty for employees who fail to pay dues under a lawful union-security provision may be discharge, this rule serves the valid purpose of assuring that employees may determine their obligation and avoid the penalty of discharge without fear that there are unwritten qualifications added to the express contractual provisions. I thus reject Respondent's argument that the past practice between it and the Employer concerning this provision is at all relevant to how a reasonable employee would interpret the language of the provision. Because of the unique nature of union-security provisions, those provisions must be, to the extent possible, self-explanatory and not dependent on extrinsic evidence for their meaning.

The language of the union-security provision in this case is set forth above. By its own terms it requires only that employees "apply for membership" in the Respondent on the completion of the employee's probationary period or on the effective date of the contract, whichever is later.[5] It does not require that employees maintain membership in, or pay dues to, Respondent as a condition of employment. It fails to give notice to employees of any obligation that would restrict their right to resign from Respondent and cease paying dues. I conclude that the contractual language in this case does not require that employees continue to pay dues to Respondent, as a condition of employment, after they have applied for membership but thereafter have resigned from membership.

Respondent argues in its brief that the Employer's rendered aid and assistance to Quick and that this matter is relevant because it shows the Employer's illegal attempt to invalidate the union-security provision as recognized by the parties' past practice. Yet, Respondent concedes that the Board has rejected the argument that because an employer may violate the Act a union is also free to violate the Act. *Roofers Local 81 (Beck Roofing),* 294 NLRB 285 (1989), enfd. 915 F.2d 508 (9th Cir. 1990). I conclude that there is no credible evidence to support Respondent's assertion that the Employer, through Quick, attempted illegally to invalidate the union-security provision. This is so because I have concluded above that it is Respondent's interpretation of that provision, and not Quick's interpretation, which is incorrect. In any event, the record clearly shows that Quick's desire to resign from membership preceded

[5] The General Counsel has expressly disavowed any intent to raise the legality of contractual language that requires "membership" in a labor organization. Thus, I do not pass on the issues raised in cases such as *Bloom v. NLRB,* 153 F.3d 844 (8th Cir. 1998).

any assistance from the Employer and was not caused by such assistance. I thus reject this argument.

It follows from the preceding findings that Respondent violated Section 8(b)(1)(A) by continuing to accept dues deducted from Quick's wages after he had resigned from membership in Respondent and in the absence of a union-security provision requiring such payment of dues. *Lockheed Space Operations,* supra at 330. Respondent's unlawful conduct began April 10, the start of the 10(b) period in this case, and continued until on or about June 12, as alleged in the complaint. *Teamsters Local 667 (American Freight),* 303 NLRB 694, 699 (1991). It is also well settled that Respondent violated Section 8(b)(1)(A) of the Act when it threatened Quick with legal action if he failed to pay dues. *Electrical Workers IBEW Local 396 (Central Telephone Co.),* 239 NLRB 469 (1977). Respondent's lawsuit against Quick to collect dues raises considerations expressed by the Supreme Court in *Bill Johnson's Restaurants v. NLRB,* 461 U.S. 731 (1983). However, it is clear that the lawsuit was for an objective that was illegal under the Act and therefore the principles of that case do not preclude the finding of an unfair labor practice in this case. Id. at 737–738 fn. 5. I conclude that Respondent violated Section 8(b)(1)(A) of the Act by filing and maintaining the lawsuit against Quick for collection of dues in the absence of a lawful union-security provision requiring the payment of dues and after he had resigned from membership in Respondent. *Professional Assn. of Golf Officials,* 317 NLRB 774 (1995). Respondent attempts to distinguish this case by pointing out that in that case there was no union-security provision while in the instant case there is such a provision. I am not persuaded. The critical point is that in this case the provision does not compel the continued payment of dues to Respondent as a condition of employment after employees have resigned from membership.

CONCLUSIONS OF LAW

1. The Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has engaged in unfair labor practices affecting commerce in violation of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act by:

(a) Accepting and retaining dues deducted from the wages of Patrick Quick in the absence of a lawful union-security that requires the payment of such dues and after Quick resigned from membership in Respondent.

(b) Threatening to take legal action against Quick if he did not pay dues to Respondent under the circumstances described above.

(c) Filing and maintaining a lawsuit against Quick for the collection of dues under the circumstances described above.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent unlawfully accepted and retained dues from Quick's wages, I shall order Respondent to make him whole for all monies deducted from his wages as union dues beginning April 10, 1997, with interest. Having found that Respondent unlawfully filed and maintained a lawsuit against Quick for the collection of dues, I shall order Respondent to withdraw and dismiss that lawsuit to the extent that it has not done so. I shall further order Respondent to reimburse Quick for any expenses he incurred in defending the lawsuit. *Professional Assn. of Golf Officials,* supra. Finally, it appears that Respondent does not maintain an office at which a notice could be posted. I shall therefore order Respondent to mail the notice to all unit employees employed by the Employer at any time since the onset of the unfair labor practices in this case until the time the notices are mailed. Id.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, Graphic Communications International Union Local 735-S, Hazleton, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Accepting and retaining dues deducted from the wages Patrick Quick or any other unit employee of the Employer after the employees have resigned from membership in Respondent and in the absence of a union-security provision that requires the payment of such dues.

(b) Threatening to take legal action against Quick or any other unit employee of the Employer for the collection of dues after the employees have resigned from membership in Respondent and in the absence of a union-security provision that requires the payment of such dues.

(c) Filing and maintaining a lawsuit against Quick or any other unit employee of the Employer for the collection of dues after the employees have resigned from membership in Respondent and in the absence of a union-security provision that requires the payment of such dues.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Patrick Quick whole for all moneys deducted from his wages as union dues beginning April 10, 1997, with interest.

(b) Withdraw and dismiss the lawsuit filed against Quick for the collection of union dues, to the extent that the lawsuit has not already been finally dismissed or withdrawn.

(c) Reimburse Quick for any expenses he incurred in defending the lawsuit described above.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, mail a copy of the attached notice marked "Appendix"[7] to all employees in

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the unit who were employed by the Employer at its Hazleton, Pennsylvania facility at any time from the onset of the unfair labor practices found in this case until the date the notices are mailed. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondent's authorized representative.

(f) Sign and return to the Regional Director sufficient copies of the notice for posting by the Employer, if willing, at all places where notices to employees are customarily posted.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT accept or retain union dues deducted from the wages of Patrick Quick or any other unit employee employed by Quebecor Printing Hazleton, Inc., after the employees have resigned from membership in Graphic Communications International Union Local 735-S and in the absence of a union-security provision that requires the payment of such dues.

WE WILL NOT threaten to take legal action against Patrick Quick or any other unit employee employer by Quebecor Printing Hazleton, Inc., for the collection of union dues after the employees have resigned from membership in Graphic Communications International Union Local 735-S and in the absence of a union security provision that requires the payment of such dues..

WE WILL NOT file and maintain a lawsuit against Patrick Quick or any other unit employee employed by Quebecor Printing Hazleton, Inc., for the collection of union dues after the employees have resigned from membership in Graphic Communications International Union Local 735-S and in the absence of a union-security provision that requires the payment of such dues..

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Patrick Quick whole for all moneys deducted from his wages as union dues beginning April 10, 1997, with interest.

WE WILL withdraw and dismiss the lawsuit filed against Patrick Quick for the collection of union dues, to the extent that the lawsuit has not already been finally dismissed or withdrawn.

WE WILL reimburse Patrick Quick for any expenses he incurred in defending the lawsuit described above.

GRAPHIC COMMUNICATIONS INTERNATIONAL UNION LOCAL 735-S